

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
JANUARY 11, 2012**

**CALL TO ORDER** A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Greg Stevens, Charles Lapp, Gene Shellerud, Jim Heim, Jeff Larsen, Ron Schlegel, and Robert Faulkner. Frank DeKort had an excused absence. Allison Mouch, Alex Hogle and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were 3 people in the audience.

**APPROVAL OF MINUTES** Heim made a motion seconded by Larsen to approve the December 14, 2011 meeting minutes.

The motion passed by quorum with Stevens, Faulkner and Schlegel abstaining.

**ELECTION OF OFFICERS** Larsen made a motion seconded by Heim to nominate Hickey-AuClaire as Chair of the board for the 2012 term.

There were no other nominations.

The motion passed by quorum.

Heim made a motion seconded by Larsen to nominate Lapp as Vice-Chair of the board for the 2012 term.

There were no other nominations.

The motion passed by quorum.

**PUBLIC COMMENT**  
*(not related to agenda items)*

Gary Krueger, 805 Church Drive, spoke about his concerns regarding wording within the draft updated version of the growth policy. He commented that the words protect, restrict, preserve and prohibit were words creating an ability to use the growth policy as a case for liability. He urged the board to take out things that cost the county money for lawsuits. He gave examples and stated the county has strict standards for zoning adoption. He thought the board should refer back to state law as it would shorten up the growth policy and give the county a document that would have less chance of having it used against them in a lawsuit.

Russ Crowder, represented America Dream Montana, 2868 Lower Lost Prairie, began his comments stating what he was about to say had no reflection on the current planning office, planning director or staff. A lot has changed since the

history he was about to review. He stated that since 1994 five county commissioners had lost their jobs because of planning related issues in Flathead County. Since that time four county planning directors have been given the axe either because of corruption or because they became embroiled in the politics of planning. During this time over 100 lawsuits have been filed against local government directly related to planning issues. He spoke about the history of the county master plan, stating that 1994 was the turning point when he saw an acceleration of attempts to get more regulation into growth policies. He felt the growth policy empowered special interest groups in their efforts to inject their own political agenda into the planning process. He gave examples of what he felt was dishonest or corrupt government actions and stated that his purpose in bringing all of this to the boards attention was to relay the fact that none of this would have happened had the county not decided at some point in the past that they were going to have a growth policy. He felt a growth policy empowered everything he spoke of. He stated to the board that when they looked at the growth policy, even though they hear some people say it's not regulatory, he hoped they would take the time to really look at the document as it needed to be cleaned up and things needed to be changed. He commented that he had a lot of hope for this board because there were some people with a lot of experience in dealing with growth policy issues and the property owners that they represented were counting on them.

**ZONING TEXT  
AMENDMENTS  
(FZTA 11-01)**

A request by Committee 'B' of the Flathead County Planning and Zoning Office for four amendments to the text of the Flathead County Zoning Regulations (regulations) aimed at improving the practicality of administration and enforcement of the regulations.

**STAFF REPORT**

Alex Hogle reviewed Staff Report FZTA 11-01 for the Board.

**BOARD  
QUESTIONS**

Stevens asked who the members of committee 'B' were.

Hogle said it was Heim, Shellerud, Cross and Keenan.

Heim asked about a comment letter that was given to the board.

Hogle clarified it had to do with provision #4 regarding greenbelt. It appeared that the person who wrote the letter thought it had to do with the highway greenbelt zoning text amendment that had been recently adopted. Most of the letter appeared to be not applicable based on misperception.

Faulkner asked which regulations were being referred to, county or state.

Hogle said it was county regulations and clarified.

Faulkner asked if committee B was recommending removing the term 'greenbelt'.

Hogle said no, the recommendation was to remove one provision of the greenbelt.

Faulkner thought it might be a good idea to change the terminology.

Hogle commented this was the first instance staff had heard about where a member of the public had any confusion with the term.

Lapp said the letter had some good points but it was talking about something more specific.

Hogle read the definition for greenbelt.

The board and staff discussed the term greenbelt and enforcement of certain conditions.

Lapp asked about the changes regarding plurality and the issue of permitted vs. principle uses in certain zones.

Grieve clarified for the board.

**AGENCY  
COMMENTS**

None.

**PUBLIC  
COMMENT**

None.

**STAFF  
REBUTTAL**

None.

**MAIN MOTION  
TO ADOPT F.O.F.  
(FZTA 11-01)**

Larsen made a motion seconded by Heim to adopt staff report FZTA 11-01 as findings-of-fact.

**BOARD  
DISCUSSION**

None.

**ROLL CALL TO  
ADOPT F.O.F.  
(FZTA 11-01)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION  
TO  
RECOMMEND  
APPROVAL  
(FZTA 11-01)**

Shellerud made a motion seconded by Stevens to adopt Staff Report FZTA 11-01 and recommend approval to the Board of County Commissioners.

**BOARD  
DISCUSSION**

None.

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
(FZTA 11-01)**

On a roll call vote the motion passed unanimously.

**COMMITTEE  
REPORTS**

Grieve asked the board to discuss the issue of committees, both the status of committees and if appropriate the membership of those committees.

Heim said when the committees were formed there was a lot to work on but didn't feel it was as necessary now. He felt the whole board could deal with the workload without having to break into committees.

Hickey-AuClaire said that was her thought as well. The workload was less and they could always hold workshops after regular meetings. They could reevaluate in the future if the workload picked up.

Schlegel said being a new member he felt he could learn more by doing it that way.

Faulkner agreed and stated if a project needed more focused attention they could form committees at that time. Otherwise, he would rather focus on issues as a board.

Shellerud said committee 'B' was valuable and would rather spend the time at a committee meeting having immediate access to staff. He would miss that and commented that he learned a lot having that one-on-one time with staff. He felt the recommendations that came out of the committee were valuable.

Larsen agreed with Heim. He understood why they formed the committees in the past with it being so busy, but at this point he would really like to hear the discussion rather than issues being brought to them without the discussion. With the current workload the board could work on items after regular meetings if workshops were necessary.

Heim asked if they would lose the quick reference with staff if it were the entire board as opposed to committees.

Grieve said no. They would have similar references at their fingertips and they could bring laptops to the meetings if they were so inclined. There is wireless internet in the building and board members could access that as well.

Stevens said he would prefer to have the entire board involved from the beginning rather than break off into committees.

Hickey-AuClaire commented that if something came up they could divide into committees.

Grieve said from an office point of view it's pretty efficient to get everyone's input all at once. It may not be as efficient to hold as many workshops and staff may do more work behind the scenes and then bring things to the entire board. There would be an enhanced understanding of information which is much more efficient than trying to explain the process to members of the board not involved with a particular committee. When the public hearing is held it could be more focused on listening to the public rather than trying to understand what's going on. He could see advantages to working with the whole board.

Stevens asked if there was any thought given to separating the text amendments for tonight's hearing and having four separate votes.

Grieve said yes but staff decided to go with one vote with the understanding that a member of the board could make a motion to pull any one of the text amendments out and table it or throw it out. He felt if any one of these caused problems it could be removed and considered at a later date. Staff felt these four were innocuous and didn't think the board would have any issues with them. He also stated that if the board didn't mind he has a list he would like to bring to them sometime in the future for discussion regarding placement of uses. He gave an example.

The board agreed they would need to deal with those types of issues.

Discussion was held regarding some of the issues with a commercial wedding facility and other events. Grieve stated he would like to schedule a workshop to discuss those.

The board and staff agreed to hold a workshop at the end of the next regular meeting, March 14, 2012. Discussion will focus on placement of events and some of the other issues committee 'B' had been working on that will now be transitioned to the board as a whole.

Grieve said he would let the board know about the date for the workshop because the March 14, 2012 agenda had several items to review already. We will combine hearings and workshops due to the fact it's a cost to everybody such as time.

## **OLD BUSINESS**

Grieve briefed the board about the status of the Whitefish interim zoning issue.

Heim asked for clarification regarding the inter-local agreement. He wondered if the city of Whitefish could shut the county out of the planning and zoning process in the 'doughnut' by doing something in that area first. He thought

there was an urgency to set up the interim zoning before Whitefish could do something to preclude the county from doing anything in that area.

Grieve clarified.

## **NEW BUSINESS**

Mouch gave the board members the history regarding the updating of the growth policy and what the focus had been over the past 16 months. She spoke about the checkpoints and consolidating the entire document into something the board could discuss. She handed out a possible timeline and spoke about the formal adoption process.

Hickey-AuClaire asked what a possible motion might be for tonight.

Mouch said if the board chooses they could make a motion to officially move the document forward and start the formal process.

Larsen asked about a recent lawsuit filed by Citizens for a Better Flathead. He stated he was concerned about some of the wording in the document and thought the board might need to look at that a little closer. He felt the board had time to do that with the proposed timeline. He stated that the supreme court ruled that the zoning had to be in substantial compliance with the growth policy and he would like to see a copy of the lawsuit that was filed by Citizens for a Better Flathead to know which sections of the growth policy they were trying to site. He was in Helena during the legislative process when they adopted this statute and said the growth policy was sold to legislation as a non-regulatory document. He commented that it bothered him that part of the law is being ignored and people are filing lawsuits based on zoning being non-compliant with the growth policy when the law says it's not regulatory.

Faulkner asked if the growth policy was mandated and by who.

Stevens said the county commissioners do.

Shellerud said the history is in the document.

The board discussed the history of the growth policy and what could happen if the county didn't have a growth policy.

Stevens said his understanding was that the county didn't have to have a growth policy but if they didn't have one there wouldn't be any zoning. If the county didn't transition from a master plan into the statutory requirements of the growth policy by a particular date, the county would have had no authority for whatever zoning was in place because it wouldn't be in compliance with the statute.

Grieve said the commissioners requested a growth policy and an update of it. He spoke of the lawsuit and said he would forward a copy to the board members so they could review it as well. He spoke about the growth policy and how it is implemented in the county. There is a lot of discretion in a legislative act by the governing body and people can disagree. The fact of the matter is the statute gives the authority to make decisions if consideration is given to the growth policy by the governing body. He urged caution in going back in and changing a lot of wording. He would rather the board focus more on comments and feelings not the minutia of this particular lawsuit. He wouldn't want to rewrite the whole growth policy based on what an individual plaintiff claimed was interpreted wrong.

Schlegel asked about neighborhood plans being legal documents.

Grieve stated that the growth policy is kind of the main umbrella and the neighborhood plans fit in there as elements of the growth policy. Under statute you are allowed to adopt things as elements of the growth policy. He stated Highway 93 North Zoning District was adopted as an implementation of the 1987 Master Plan which itself was the county-wide document and has now been superseded by the 2007 growth policy. That zoning district is now an implementation of nothing but the 2007 growth policy. There are other zoning districts that are implementations of neighborhood plans, such as the Bigfork Zoning District. The neighborhood plan takes general guidance from the county growth policy and then gives more specific guidance to the Bigfork area.

There was general discussion related to an element of interpretation granted to the governing body being a legislative act. They have the right to give consideration to all of the elements and then make a determination. Not everyone is going to agree with the three commissioners' interpretation but they have all been elected to make those decisions. The issue of what is written in the growth policy and how it's interpreted in the act of using the growth policy, by implementing zoning or reviewing a zoning map amendment, can certainly be interpreted as regulatory because you do have to base zoning on what's in the plan. Zoning is the implementation of the plan.

Lapp asked if there had to be any consideration given to the zoning when you are doing a growth policy. The zoning that was implemented 20 years ago is completely different than the growth policy we have now and yet it has to be in substantial compliance. He asked if the zoning had to change or did the growth policy have to stay according to what the zoning is.

Grieve stated when you amend the plan you should follow it by amending the zoning to reflect that plan. He went on to state that would be challenging and gave an example of one scenario. He also spoke about the city of Kalispell updating their plan and the jurisdiction boundaries.

Grieve summarized the board's discussion regarding the draft updated growth policy stating the board had indicated they would like to take a fresh look at it based on the public comments received at tonight's meeting. Based on the proposed timeline it appears they have 60 days built in for public comment. They could reduce that to 30 days, hold a public hearing and then schedule some workshops to have time for the board and all the public to consider any new proposed language.

Larsen said he liked that idea because a lot of people wait until the last day to comment.

Heim asked the board if they thought they were going to do a word search on specific words.

Mouch said she would caution that because they had to remember the goals and policies were based on facts as well as the vision statements. When they started the process they had been staying pretty clear of significantly amending the goals and policies. Doing a whole scale word search and then replacing all of that at this juncture would probably constitute more than just a couple of workshops. They would be changing the scope of the update that they all agreed to do.

The board and staff discussed highlighting certain words throughout the document.

Stevens spoke about a subdivision in Marion that the staff report recommended denial for based on the fact it was not in compliance with the growth policy. He commented that he has never gotten an answer that satisfies him whether growth policies or master plans are regulatory or non-regulatory because the effect of them on zoning and subdivisions seems to be they have to be in substantial compliance with the growth policy. After hearing public comment regarding the wording in the growth policy costing the county money, he felt that it was actually costing property owners that were trying to do something with their property a lot of misery. He said it pits a lot of neighbors against neighbors if they are not cautious about the wording in all county documents. He commented that he had lived here all his life and watched the area grow. He wasn't so sure it wouldn't have developed pretty close to the way it has without any regulations. What they were looking at was simple. You have to have places for people to work, places for people to live, places for people to recreate and worship. He wasn't sure why it had to be so complicated and miserable. He felt that words were the basis of the problem. He stated he had been appointed to the board in part because of his experience with master plans, growth policies and the implementation of those. He felt like he was at a disadvantage because he hadn't had an opportunity to review the document and was nervous about what's in there based on a few words that could lead to lawsuits. He didn't want to put any words in there by way of hard, restrictive



language that somebody could portray in a public hearing that becomes public record that becomes evidence in a lawsuit. In his view, he would like to take the suggestions from public comment and try to get it out of there if it's dangerous.

Faulkner asked if there was a deadline or could the board take a second look.

The board discussed the proposed timeline and whether they could meet it. They felt they could have a 30 day public comment period beginning when a press release goes out and then hold a public hearing on February 15, 2012. They also discussed the fact they were only going to update or review the document, not revise it.

The board and staff discussed options regarding holding a public hearing at the end of a 30 day public comment period, holding a workshop, procedures and timelines leading up to a public hearing and what the possible outcome could be after a public hearing is held.

Several board members requested a copy of the draft updated growth policy, without the appendices, so they can highlight and make suggestions or changes for discussion at the public hearing. Staff will send a disc in Microsoft Word format to each of the board members who requested one. Stevens requested a paper copy.

**MOTION TO  
SCHEDULE A  
PUBLIC  
HEARING**

Hickey-AuClaire made a motion seconded by Larsen to have a public hearing noticed and scheduled for February 15, 2012, to accept public comment on the growth policy update as presented.

**ROLL CALL**

On a roll call vote the motion passed unanimously.

**DISCUSSION**

Grieve read the statute regarding the procedure for updating a growth policy. He stated that if the board makes substantial changes at a workshop after the public hearing, they would want to hold another public hearing. Statute does not say anything about holding a public hearing and then editing the document prior to making a recommendation to the governing body.

Schlegel asked if the second public hearing could be held at the March 14, 2012 meeting.

Staff said that would only allow for one workshop and they would rather get the procedure right than meet a proposed timeline. They might need more time to workshop the document.

**NEW BUSINESS  
(Continued)**

Grieve stated that Kalispell planning requested they be put on a future agenda to talk to the board about their growth policy update. The board members agreed to add this to the agenda for the March 14, 2012 meeting.

Grieve reviewed the information he would be discussing with the commissioners at his next monthly meeting regarding staff workloads and projects.

**ADJOURNMENT**

The meeting was adjourned at approximately 9:05 pm. on a motion by Lapp. The next meeting will be held at 6:00 p.m. on February 15, 2012.

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Marie Hickey-AuClaire, Chairman

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Mary Fisher, Recording Secretary

*APPROVED AS SUBMITTED/CORRECTED: \_\_\_\_\_ / \_\_\_\_\_ /12*

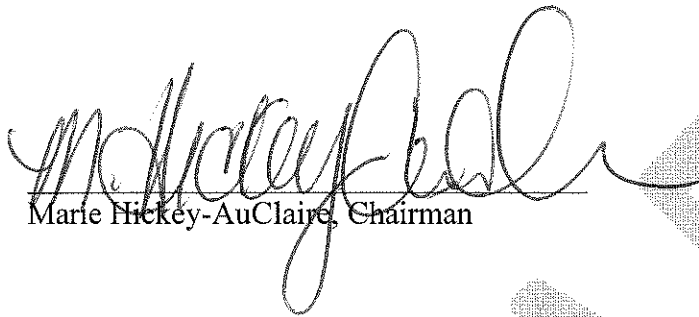
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